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Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Summary and recommendations of the report of the mission of the Permanent Forum on Indigenous Issues to the Plurinational State of Bolivia**

Summary

In response to a request from the Government of the Plurinational State of Bolivia, the Permanent Forum on Indigenous Issues organized a multi-agency mission to visit the Department of Santa Cruz and La Paz in April and May 2009 to verify complaints regarding forced labour and servitude among communities of the Guarani people and to draw up proposals and recommendations to ensure that the fundamental rights of persons, communities, and the indigenous peoples are respected. The full report of the mission was presented to the Government on 31 August 2009. The present report contains a summary of the full report.

* E/C.19/2010/1.

** The full report can be found on the website of the United Nations Permanent Forum on Indigenous Issues, at http://www.un.org/esa/socdev/unpfii/en/news.html.

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I. Introduction

1. In response to a request from the Government of the Plurinational State of Bolivia, the Permanent Forum on Indigenous Issues organized a multi-agency mission to visit the Department of Santa Cruz and La Paz in April and May 2009 to verify complaints regarding forced labour and servitude among communities of the Guaraní people and to draw up proposals and recommendations to ensure that the fundamental rights of persons, communities, and the indigenous peoples are respected. The mission was comprised of the chairperson of the Permanent Forum, Victoria Tauli-Corpuz; members Lars Anders-Baer, Bartolomé Clavero and Carlos Mamani; and two officials of the Department of Economic and Social Affairs of the United Nations Secretariat, as well as experts from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the country, the Food and Agriculture Organization of the United Nations (FAO) (subregional office of FAO in Panama) and the International Labour Organization (ILO) in both Bolivia (Plurinational State of) and Peru.

2. The mission's mandate was established in a recommendation of the Permanent Forum at its seventh session in May 2008 (see E/2008/43, para. 156), and confirmed by an official invitation from the Government on 12 December 2008.

3. The present report is a summary of the full mission report, which is based on interviews conducted by the mission, inspections, census data and information from the Prefecture of Santa Cruz and the national Government, official documents of ILO, OHCHR, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, the Inter-American Commission on Human Rights of the Organization of American States (OAS), and the Indigenous Peoples and Empowerment Programme of the Swiss Agency for Development and Cooperation in the country; as well as information and documentation provided by indigenous peoples' organizations, the livestock breeders' federation, and national and international non-governmental organizations (NGOs).

4. The mission visited communities in the Chaco region and met with indigenous organizations representing the Guaraní people, such as the Guaraní People's Assembly (APG); with the Captaincies of Alto Parapetí, Chuquisaca and Tarija; with landowners in the area and the national Federation of Livestock Breeders; with the Ministers of Justice, Rural Development, Agriculture and Land, and Labour, Employment and Social Security; with the Vice-Ministers of Labour and Social Security, Autonomies and Justice and Fundamental Rights; with the Office of the Attorney General (Fiscalía General del Estado), the National Agrarian Tribunal, the Acting Ombudswoman (Defensora del Pueblo en Suplencia Legal), the President of the Senate and that of the Chamber of Deputies with its Human Rights Committee, the Director General of the country's lowlands, the office managing the Inter-ministerial Transition Plan for the Guaraní People, the National Institute of Agrarian Reform (INRA), as well as the Office of the Prefect and the District

Note: Investigations into human rights violations, particularly when the events are recent, can carry a great deal of risk for the researchers as well as for those who provide information and can result in violence, imprisonment or disappearance for individuals and institutions that defend basic human rights. For this reason, the witnesses quoted herein have been kept anonymous. The Permanent Forum wishes to express its appreciation of the efforts of individuals and institutions which, by providing information, contributed to the mission.

Attorney's Office of Santa Cruz de la Sierra. The Permanent Forum wishes to thank individuals, organizations and institutions for the trust they placed in the mission.

5. At the eighth session of the Permanent Forum, members orally presented the recommendations contained in the present report. On the basis of the presentation, the Permanent Forum thanked the Governments of the Plurinational State of Bolivia and Paraguay for their invitations, welcomed the mission, which had been carried out pursuant to the Forum's recommendation regarding the situation of forced labour in Guaraní communities at its seventh session, and decided to publish the reports of the mission as documents of the Forum. The Forum urged United Nations country teams to follow up on the recommendations and suggested to the relevant Governments that they report on the implementation of the recommendations at the ninth session of the Forum (E/2009/43, para. 94).

II. Legal context

6. The Bolivian Government has ratified and supported a series of international treaties and declarations and therefore has a duty to implement them. To that end, the country has made a major effort to incorporate these commitments in domestic law. For instance, the United Nations Declaration on the Rights of Indigenous Peoples (see General Assembly resolution 61/295) not only became Law No. 3760, its principles have been built into the new Constitution of the State.

7. The Constitution itself, the General Law on Labour, its implementing regulations and the Criminal Code condemn, among other things, forced labour, child labour, and labour discrimination, and they defend freedom of association, job security, observance of the minimum wage and of the maximum number of hours of work, and compliance with contributions to social security.

8. International law obliges Governments to use their power to protect and give effect to human rights.[1] That entails not just ensuring that their officials comply with human rights standards, but also acting with due diligence to address violations committed by non-State authorities and by private persons. When a State or a legally constituted authority knows or should know that violations of human rights are being committed and fails to take appropriate steps to prevent them, it shares with the perpetrators responsibility for those violations. The principle of due diligence includes the obligation to prevent human rights violations, investigate them, punish them when they occur, and provide redress and support for victims.

III. Forced labour of Guaraní communities in the Bolivian Chaco

9. The existence of forced labour affecting indigenous communities of the Chaco region has been extensively documented in investigations and reports of the Bolivian Government, intergovernmental organizations, indigenous peoples'

[1] See, for example, art. 2 of the International Covenant on Civil and Political Rights.

organizations and NGOs.[2] The Government has taken a number of measures to address the issue, including the establishment in 2007 of the National Council for the Eradication of Forced Labour and approval of the Inter-ministerial Transition Plan for the Guaraní People (Supreme Decree No. 2929). The plan, which envisages, inter alia, effective exercise of the rights of Guaraní families and land reorganization (*saneamiento de tierras*), has encountered direct opposition from the owners of large estates in the Chaco region, as well as from local governments, civic committees and stockbreeders associations.

10. The Ministry of Justice, with the support of the Swiss Agency for Development and Cooperation and ILO, and in coordination with the Council of Guaraní Captains of Chuquisaca, has also fostered processes of reconciliation between owners of haciendas in the Department of Chuquisaca and Guaraní workers, who worked for years without remuneration. The reconciliation process resulted in monetary payments to redress violations of labour rights, compensate workers for years of service, and provide for social benefits. However, in other areas of the Chaco, including Alto Parapetí, many landowners continue to deny the existence of forced labour.

11. The forced labour of Guaraní peoples takes place in the context of the region's complex political economy. Land ownership in the country is highly concentrated. The ancestral lands that have been recognized or are being claimed by Guaraní peoples often contain important reserves of hydrocarbons and are in the middle of large estates, sometimes crossed by gas pipelines owned by oil companies. The existence of this vast wealth, from which the Guaraní people derive no benefit, provides landowners an additional interest in opposing any agrarian reform, and has greatly exacerbated tensions between the Government and the local authorities in the country's richest (oil and gas) departments. Those departmental local authorities, in conjunction with big landowners, are fighting for control of the resources and looking for a high degree of autonomy from the Government.

12. In many cases, the owners of haciendas in the region do not have high incomes and their haciendas operate with inexpensive indigenous labour. This has become politically significant since the adoption in 2007 of Supreme Decree No. 29215, which establishes that the existence of relations of servitude is detrimental to society, against the collective interest, and an obstacle to the performance of "the economic and social function". According to the provisions of articles 28 and 29 of

[2] These reports are detailed in the full report of the mission and include reports by the NGO Anti-Slavery International (1997, 2006); ILO (2005); the Vice-Ministry for Lands (2005); the Ministry of Justice, in coordination with the Ombudsman and the Council of Guaraní Captains of Chuquisaca, with support from the Swiss Agency for Development and Cooperation (2005); the Ministry of Justice of Bolivia and the Swiss Red Cross (2007). The situation was also addressed by the December 2007 mission of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who underscored the existence of indigenous people subject to various forms of servitude or forced labour in the haciendas of the Chaco region. In June 2009, the Inter-American Commission on Human Rights of OAS also carried out that fact-finding mission in the Bolivian Chaco. According to its report, "The Commission has received detailed information on the case of Guaraní families living on estates in the Bolivian Chaco (…) This situation has persisted for decades and, in general terms, involves excessive physical labour for persons of all ages, including children, teenagers, and elderly adults, in some cases under the threat of corporal punishment, about which the Commission heard alarming testimony. (…) According to reports … the owners are frequently part of or are directly related with the local political power (…)."

Law No. 3545 (the community-based Agrarian Reform Renewal Act), lands used to the detriment of the collective interest (art. 28) shall revert to the original domain (*dominio originario*) of the nation, without any compensation, and total or partial failure to comply with the economic and social function shall be grounds for such reversion (art. 29). In a referendum held on 24 January 2009, the State approved its new Constitution, which is consistent with the United Nations Declaration on the Rights of Indigenous Peoples. Despite opposition in eastern parts of the country (Santa Cruz, Pando, Beni, Tarija), the new Constitution was adopted with a majority of votes. Both the new Constitution and the Declaration provide for the reconstitution of indigenous territories and self-government for these peoples.

13. Thus, the owners of the haciendas have two main reasons for getting organized: (a) to keep title to their lands, given the existence of oil and gas in the area; and (b) to keep their position of authority (*patronos*). The mission heard allegations that there is a third reason, which still needs to be proved, namely a possible partnership of the hacienda owners with drug traffickers, which would explain why the Alto Parapetí area is kept closed (with padlocks on the bars or gates) and monitored (using radio communication systems).

14. Faced with the new Constitution and amendments to the agrarian reform regulations, the hacienda owners appear to have quickly organized themselves to review the risks posed to them by the policy of returning lands to the communities and reconstituting their territories. The mission received evidence that the landowners were now focusing on improving some of the working conditions of the Guaranies on condition that they would have no ties with the Guaraní People's Assembly and were expelling from the haciendas and threatening indigenous persons affiliated to APG. The mission was also shown evidence that the hacienda owners have obtained the support of the authorities in the area and of the Prefecture of Santa Cruz. The mission received evidence of blatant discrimination and organized violence and ascertained that the Prefecture of the Department of Santa Cruz, as well as the municipal authorities, still take the line that the servitude and forced labour to which the indigenous peoples are subjected do not exist.

IV. Summary of the findings of the mission

15. The full report of the mission contains analyses of the situation of the Guaraní people with respect to violations of different rights (forced labour, child labour, poor working conditions, sexual abuse, the loss of, and consequent lack of access to, lands, the non-existence of social services, restrictions on the right to freedom of association, discrimination, and judicial bias). It includes a section on the limited progress made with agrarian reform and the Transition Plan for the Guaraní People, for political and bureaucratic reasons, which has left entire communities in an extremely precarious state, including a severe food crisis that needs to be addressed as a matter of urgency.

16. The conclusion is that forced labour exists in the Chaco region, along with grave violations of international treaties ratified by the State. The mission appreciates the decision announced by Government officials to adopt measures aimed at eradicating conditions and situations preventing the full exercise of human rights. However, the mission also established failure to comply with the following instruments:

- United Nations Declaration on the Rights of Indigenous Peoples (General Assembly resolution 61/295, annex, and Law No. 3760 of the Plurinational State of Bolivia)
- ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169)
- ILO Convention concerning Forced or Compulsory Labour (No. 29)
- Supplementary Convention concerning the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- ILO Convention concerning Minimum Age for Admission to Employment (No. 138)
- ILO Convention concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour (No. 182)
- ILO Convention concerning Freedom of Association and Protection of the Right to Organize (No. 87)
- ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (No. 98)
- ILO Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (No. 100)
- ILO Convention concerning Discrimination in Respect of Employment and Occupation (No. 111)
- ILO Convention concerning the Protection of Wages (No. 95)
- Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex)
- Convention on the Rights of the Child (General Assembly resolution 44/25, annex)
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
- Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex)
- International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 (XX), annex)
- International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200 A (XXI))
- International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI))
- American Convention on Human Rights (arts. 6, 13, 15, 16, 21, 22 and 24).

17. These violations, as well as violations of the old and the new Bolivian Political Constitution, the General Law on Labour and the Bolivian Criminal Code, oblige the Government to adopt urgent measures to address the situation of the Guaraní

people in respect of the following issues ascertained by the mission, which are summarized below.

A. Existence of forced labour and servitude of Guaraní men and women

> The owner gives us sugar, noodles, rice, and two t-shirts, but we always owe more than our wage.
>
> Guaraní man, May 2009

> Again and again, the cattle breeders get what they want. The people work and can never pay their debt. Every year they draw up a list ("settlements") and its gets longer and longer. Prices are much higher than in the markets. If you ask for social security, the boss says that the employee has to pay. If you say you are leaving, the boss says you are just lazy and don't want to work.
>
> Guaraní woman, May 2009

18. There is a specific term for forced labour in the country, namely *empatronamiento* (which means subjected to the "patrón" or employer). Very often, it is servitude or debt bondage (*enganche*), or the captivity of families inside the haciendas. Guaraní men and women grow old on the estates working as labourers in the fields, looking after cattle, or doing other work, including domestic chores, for the owner. Wages are either very low or non-existent as such, and are often not enough to satisfy basic needs. The indigenous workers become indebted to the owners, who advance them remuneration in the form of food and clothes, recorded at high prices in the accounts, in such a way that the debt is perpetual. Accounts are reconciled once a year, with the employers keeping the books. The situation is particularly bad for women in domestic service. The private world, in which they work long hours, usually turns into an environment of subjection, maltreatment and verbal and physical aggression. Often there is no monetary remuneration and no health-care coverage.

B. Existence of child labour and other violations of the rights of the child

> The children work without being paid and the owner says they are playing, not working.
>
> Guaraní man, May 2009

> The owners come and say they are taking our children to the city to be educated, but when they come back they don't know anything. Many girls are sexually abused and when they become pregnant by the owner, they send them back to the community. Some never return.
>
> Guaraní man, May 2009

19. Children are used to feed hens, look after pigs, graze calves and cattle, and to separate kernels from corn. These are considered "natural", unremunerated chores. School infrastructure in the area is deficient and, as schools are often private and operated within haciendas, landowners may take children out of school and put them

to work. The mission received reports that the hacienda owners interfere with Guaraní children's opportunities in other ways too, as when one family of Alto Parapetí landowners initially objected to a trip to La Paz by a group of Guaraní children, financed by ILO and the Swiss Agency for Development and Cooperation, to take part in a meeting of indigenous children called Constructores de la paz (Peacebuilders). (Later the landowners retracted and the children were able to go.) The mission also heard allegations of trafficking in Guaraní children, who are separated from their families and taken to urban centres to work as domestics; as well as reports of sexual abuse of Guaraní girls.

C. Inadequate labour conditions

> Labour law does not apply here because we are poor employers who live simply.
>
> Hacienda owner in Alto Parapetí, May 2009

20. Prejudice and discrimination against women, indigenous peoples and others continue to be widespread, constituting an obstacle to the social development of the country. Women, especially indigenous women, often work longer hours than men, usually for lower wages and in precarious, unstable jobs. The minimum wage is low, even more so if wages are received in kind, with product prices set arbitrarily and with no form of supervision, as is reportedly the case in numerous haciendas in the Chaco. In recent months, some hacienda owners, aware of the accusations of servitude and forced labour, have expelled numerous Guaraníes from their estates and reduced their workforce, while increasing wages for the few Guaraníes allowed to remain "because they are of good character and don't want problems".

21. The mission received reports that maltreatment and corporal punishment, which were frequent just a few months ago, have stopped. However, most workers are still paid in kind: in food and clothing. The mission also received reports from Chuquisaca that elderly Guaraníes collecting Renta Dignidad (a non-contributive universal old age pension) were having it "kept for" them by the hacienda owner, who had given them some very low-value kitchen utensils in return. Part of the problem stems from the very small number of Government labour inspectors, lack of resources to carry out inspections, and the barriers that inspectors encounter if they try to enter the haciendas.

D. Lack of legal security in respect of land ownership, be it collective or individual plots; deprivation of territory, lands and resources; inequitable land ownership

> We received some land from NGOs and the Church: 17 hectares for 20 families. That is not enough; it just provides us with enough for housing. We want to have both land and territories.
>
> Guaraní leader, May 2009

22. The Agrarian Reform Law is being implemented, but slowly and with interruptions. The reorganization of lands, which consists of a revision of title deeds and land tenure in rural areas, has met with open and violent resistance from

hacienda owners and by local authorities. Representatives of INRA, as well as the Vice-Minister of Lands and numerous Guaraní leaders have been beaten, harassed and kidnapped and prevented from entering the area to do their work.

23. In February 2009, INRA issued reorganization resolutions ordering the reversion to the State of 36,000 hectares of lands owned by four hacienda owners in the Cordillera province of Santa Cruz because of proof of the existence of relations of servitude and, therefore, of non-compliance with the economic and social function established under article 157 of the Implementing Regulation of Law No. 1715, amended by Law No. 3545 on the community reorganization of agrarian reform. In March 2009, President Evo Morales (accompanied by army and police officers) awarded the first rural property title deeds resulting from this reorganization to both Guaraní families and non-Guaraní small farmers in the area. The affected hacienda owners responded by challenging the decisions taken by INRA before the National Agrarian Tribunal.[3]

24. Given previous cases, this could take years to resolve. The tensions between the Government and the opposition have led to paralysis of the national judicial system and to politicization of local courts. That is one of the main obstacles to the enforcement of any judicial ruling in the country, including decisions related to the agrarian reform programme.

25. According to INRA, in December 2008, 52 per cent of the lands still have to be reorganized and in 12 per cent the process is under way. In other words, only 35 per cent had been examined as part of the titling process. The result of this long bureaucratic process has been a severe worsening of living conditions for the Guaraníes. The disputed lands remain intact, despite the handing over of titles. Many Guaraníes were expelled from the haciendas just months ago and have no access to land; and those that do have access to a small amount of land lack seeds and materials. They should have been provided under the Inter-ministerial Transition Plan for the Guaraní People (PIT), which has, however, also suffered long administrative delays.

E. Restrictions on freedom of association and movement

> Because I am trying to get ourselves organized, I cannot work, the owners don't want to see me.
>
> Guaraní man, May 2009

26. The mission received reports of numerous violations of both freedom of association and freedom of movement. Restrictions on freedom of movement are exacerbated by geographical isolation of the Guaraní communities; in Alto Parapetí it takes several hours in a vehicle, and many more on foot, to reach the nearest town, Camiri. Access roads in Alto Parapetí cross the haciendas, which means that the hacienda owners can control the use of them.

[3] The Santa Cruz Federation of Livestock Breeders gave the mission a file explaining the legal actions brought against the Government, which include challenging the decisions of INRA, an appeal on account of actions against the Constitution, criminal charges for falsification of documents and facts (eight complaints of irregularities in surveys of Guaraníes conducted by INRA) and the administrative law case before the National Agrarian Tribunal.

27. The mission received reports of abuses of the freedom of association, in particular in relation to membership in the APG. Since it was founded in 1987, APG has been disfavoured by many hacienda owners, who now promote new Guaraní organizations co-opted by the owners and working in their favour. These new organizations promoted by the hacienda owners are supported by the Prefecture of the department for housing improvement projects and other food-for-work programmes, in spite of the fact that the mission was informed that, according to the Government Administration and Control System, it is prohibited to use public funds on private property. The mission was informed that such investment is made on condition that the Guaraníes renounce membership in APG. The mission was also informed that Guaraníes associated with APG are stigmatized and, in some cases, recently expelled from haciendas and now unable to get jobs on other farms in the area, which is a recent development that has triggered a serious food security crisis among the expelled families.

F. Systematic violence against indigenous peoples

> That's how we live here in fear. In fear because we live so close to the owners. If we say bad things about the boss, they punish you.
>
> Guaraní man, May 2009

> Not long ago, the owner came and burnt down our school. Now the children have no school.
>
> Guaraní man, May 2009

28. There have been numerous documented episodes of violence against indigenous peoples in the eastern region of the country. For example, in July 2008, the Ombudsman prepared a report by his Office on the events of April 2008 in Alto Parapetí, as a consequence of the reorganization of lands, in which he reported that senior INRA officials, civilians and members of the Guaraní People's Assembly were kidnapped and tortured, as a result of which 46 people were injured, 35 slightly and 11 severely, including the Director of INRA. The Ombudsman reported that those acts were followed by even more violent attacks in September 2008.

G. Discrimination, lack of access to justice and lack of impartiality of the judicial system and of regional public administration

> The hacienda owner [name omitted] was summoned to go to Camiri to answer for the crime of using firearms but he didn't go. The hacienda owner [name omitted] was summoned to go to Camiri to answer for the crimes of violence against our communities and he didn't go either, and nothing was done. Now they have denounced our Guaraní brothers, who have to go to Santa Cruz. We haven't got the money needed for their trip but if they don't go they are threatened with detention pending trial.
>
> Guaraní leader, May 2009

29. The mission found serious cases of lack of impartiality, to the detriment of indigenous peoples, at both the judicial and administrative level. At the judicial level, the full report of the mission details a number of cases, including the failure to

adequately investigate September 2008 attacks on the offices of indigenous peoples' organizations and NGOs supporting them. The mission also heard reports indicating a lack of impartiality in terms of the administrative system. The mission was informed, for example, that the State had not built schools, health centres or public housing for Guaraní communities inside the haciendas because it is prohibited to use public funds on private property. Nevertheless, the mission ascertained that recently public funds were invested in private haciendas in Alto Parapetí; so that the hacienda owners have allowed benefits for co-opted Guaraníes who are loyal to the owner,[4] while Guaraníes who fight for their rights have received nothing.

H. Weak presence of the State, lack of political and administrative governance: the critical state of Guaraní communities

> The results of the reorganization of lands will take a long time, but the Guaraní people need to eat now. We can't eat the land; we need more seeds and tools for ploughing ....
>
> Guaraní leader, May 2009

> I live in one of the urban integrated areas. What we earn is just enough to eat and to go on working. We lived in a weird kind of poverty from which there is no way out. On the face of it, we're free, but in reality we aren't.
>
> Guaraní leader, 3 May 2009

30. The Bolivian Government is currently promoting the Community Reorganization of the Agrarian Reform (Reconducción Comunitaria de la Reforma Agraria). In addition, and more specifically, it has begun taking steps under the Inter-ministerial Transition Plan for the Guaraní People. However, progress has been slow and sporadic. The situation of the expelled and landless Guaraní families is very serious indeed, with a food crisis that needs to be alleviated as a matter of urgency. The mission observed that numerous children in the Guaraní communities showed signs of second-degree malnutrition, which has irreversible consequences in terms of child development, leading to a higher incidence of disease, stunting, and a lower adult intelligence quotient. No crops have been sown in 2009. The food crisis, threats and lack of opportunities have induced a high percentage of Guaraníes to migrate to the city of Santa Cruz, a development that has produced uprootedness, loss of identity, and also very precarious living conditions in the so-called integrated urban areas, which are actually slums on the outskirts of Santa Cruz.

V. Recommendations of the Permanent Forum

A. Free, prior and informed consent

31. The three branches of the Bolivian Government — executive, legislative and judicial — as well as the Ombudsman Office, departmental governments and all other autonomous governments to be established, must take full responsibility for

[4] The housing programme of the Concern Project International, with the support of the United States Agency for International Development, which requires that 80 per cent of the investment be counterpart put up by the Prefecture.

ending practices of forced labour and should consult and cooperate with indigenous peoples to institute plans of action to end forced labour practices and discrimination against indigenous peoples.

32. All recommendations included in the present report should be implemented with the free, prior and informed consent of the indigenous peoples affected.

33. Given that Autonomy Statutes were enacted prior to the Constitution, they do not incorporate the Constitution. Until the Autonomy Statutes fully adapt to the Constitution, all State institutions must ensure that departmental policies do not support or conceal in any manner forced labour practices, and that all departmental policies are implemented with the free, prior and informed consent of the indigenous peoples affected in accordance with the provisions of the Constitution.

B. Institutional strengthening

Governance in the Chaco region

34. In accordance with its constitutional powers, the Bolivian Government must ensure the adequate presence of the State institutions in the zones affected by forced labour and child labour practices, including by strengthening the presence of the Ombudsman, the Public Ministry, and the Ministries of Labour, Employment and Social Welfare, Education, Health and Sports and Cultures, and the Vice-ministries of Decolonization and of Interculturality. This includes increasing the number of well-trained technical personnel, including Guaraní peoples, under the various ministries, ensuring that public services are provided to indigenous communities and ensuring adequate and sustained budgetary allocations.

Labour issues

35. The Government must provide sufficient resources to the Ministry of Labour, Employment and Social Welfare to carry out adequate and timely labour inspections within the Chaco region. Resources provided must include adequate salaries for labour inspectors, computers and Internet access, training, vehicles and equipment.

36. Labour inspectors should receive training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by the United Nations Declaration on the Rights of Indigenous Peoples. United Nations entities in the country should offer technical support and training in this regard.

37. The Ministry of Labour, Employment and Social Welfare must ensure the integrity of labour inspectors through the enforcement of strict oversight mechanisms pertaining to conflict of interest.

38. The Government must ensure that the authorities of the Departments of Chuquisaca, Santa Cruz and Tarija guarantee the safety of labour inspectors and their free access to all lands.

39. In instances where labour inspectors document practices in violation of domestic or international law, their findings should lead to swift legal redress.

40. The Ministry of Labour, Employment and Social Welfare must ensure that indigenous workers are not paid less than the minimum wage and receive social services and benefits on an equal footing with non-indigenous workers.

41. Projects such as the Indigenous Peoples and Empowerment Project of the Ministry of Justice, which work in close collaboration and consultation with indigenous peoples of the Chaco region to protect labour rights, should be strengthened and expanded.

42. It should be considered that the final will of indigenous peoples who are subjected to forced labour may not be to become hired workers in the haciendas, but to recover their land and resources.

Law enforcement: police, prosecutors and judges

43. The justice system must be strengthened so that the rule of law will persist in the Chaco region, including through the following measures.

44. The Judicial Branch, the Public Ministry and the Ombudsman should uphold and guarantee the rights of indigenous peoples as recognized in the Constitution, treaties and international human rights law.

45. Any autonomous governments that will be confirmed or established in accordance with the Constitution must ensure their justice systems adequately address issues of forced labour and other basic human rights.

46. The Government must, as a matter of urgency, ensure the safety and protection of Guaraní leaders and their defenders, and take appropriate measures against those found to have threatened or committed acts of violence against them.

47. The Government and the authorities of the departments of Chuquisaca, Santa Cruz and Tarija must also ensure the right of free movement and association of indigenous peoples, including by guaranteeing their free movement on access roads between communities. These authorities must respect the future autonomy of the Guaraní peoples, including their organizational structures, and should not promote the creation of parallel organizations or encourage conflict with discriminatory promises of aid and development projects.

48. Appropriate legal action must be taken against those who threaten the freedom of association of Guaraní peoples, including in relation to APG membership.

49. The Government must ensure that members of the armed forces, police, prosecutors and judges in the Chaco region are provided training on human rights, including labour rights, women's rights, children's rights and the human rights of indigenous peoples, including those affirmed by ILO Convention No. 169 and the Declaration. United Nations local entities should offer technical support and training in this regard.

50. In accordance with their constitutional powers, the Government and departmental authorities in the Chaco region must ensure that all police forces remain neutral and adhere to the rule of law in carrying out their official duties.

51. In accordance with their constitutional powers, the Bolivian Government must ensure the integrity and independence of law enforcement agencies and the judiciary, including indigenous justice systems, through the enforcement of strict oversight mechanisms pertaining to conflict of interest. Law enforcement officials

who do not respond appropriately to human rights abuses should be accountable and be subject to disciplinary measures, to ensure constitutional guarantees.

52. Indigenous communities and, as they are established, indigenous autonomies, must have access to legal services financed by the State to protect and defend their interests on a collective basis.

53. Prosecutors should vigorously and without undue delay prosecute cases of human rights abuses against Guarani peoples and their defenders, and should be sufficiently resourced to ensure that the cases are treated with the appropriate priority and processed without undue delay. Any decision not to proceed with a case should be promptly communicated to the survivor of the abuse, who should be able to appeal the decision.

54. The Ombudsman Office should establish a "Mesa Defensorial" in the Chaco region to properly assist in the promotion of the rights of indigenous peoples in the region.

55. Independent organizations dedicated to the defence of indigenous peoples' rights should receive special attention and protection by government and prefecture authorities in the Chaco region.

C. Financing

56. The Congress and the Bolivian Government must ensure adequate public funding to implement all recommendations contained in the present report, especially with regard to the Minister of Labour, Employment and Social Services, INRA and the various development programmes and projects required to ensure successful development of the Guarani people, starting with the Inter-ministerial Transition Plan. All funding decisions that impact the situation of Guarani peoples in the country, including those related to the implementation of the Inter-ministerial Transition Plan, must be taken with their free, prior and informed consent.

57. To the extent possible and consistent with organizational capacity, funds should be transferred directly to indigenous peoples' organizations and institutions.

58. The United Nations should provide increased operational aid on indigenous issues in the country, including the abolition of forced labour.

59. The mission calls upon the donor community, including bilateral donors, to support all initiatives towards the implementation of these recommendations in the country.

D. Land reform

60. The Permanent Forum considers the Policy for the Reconstitution of the Territory of the Guarani Nation of fundamental importance, and a good example of an effective application of the United Nations Declaration on the Rights of Indigenous Peoples. The Bolivian Government must ensure, including through the provision of an adequate budget, the expeditious completion of the process of *saneamiento* (land titling for indigenous peoples and the implementation of process of redistribution of land). This is urgent now that the new Constitution is in force. United Nations agencies, such as FAO and the World Bank, should provide, as

requested by indigenous peoples, support and finance to the Government in this regard.

61. While the process of *saneamiento* remains ongoing, officials and staff of INRA should enjoy special protection while carrying out their official duties.

62. Insofar as the National Agrarian Tribunal is not replaced, it must address in an efficient and timely manner the cases under its jurisdiction, within the deadlines set by law. Additionally, it is recommended that the Tribunal contribute towards genuine agrarian justice, ensuring the rights of access to land, including the right of indigenous peoples to their territories. The State must assure sufficient resources to enable the Tribunal to fulfil its duties.

63. As lands were taken from indigenous peoples without consent, due process or compensation, where indigenous land claims are challenged, the burden of proof should fall to the non-indigenous party with regard to the land in question.

64. Land reform must take place in the context of an integrated approach to improving the situation of indigenous peoples, including through the provision of capacity-development programmes and by ensuring access to basic services, including food, water and education.

65. So long as Guaraní autonomy has not been established, the Government must undertake extensive consultation with Guaraní communities regarding land use, land ownership and collective or individual titling of land for the Guaraní people. Those provided titles to their lands should also be given the adequate support needed for them to make these lands productive so their basic needs can be met. This will include technical training, credit assistance, the provision of farm implements and technologies and farm-to-market roads, among others. FAO has extensive experience with a series of validated methodologies for ensuring success at this stage and is a natural partner in this process.

66. Given that, owing to institutional weakness and a lack of presence in the region, the Bolivian State has allowed the Guaraní people to remain in a state of forced labour, it now has the responsibility to provide compensation for the harm suffered. Compensation should include appropriate measures to restore ancestral lands and ensure that communities are free, productive and self-sufficient. The State must allocate adequate financial, human and institutional frameworks in the region to ensure the success of this process.

E. Inter-ministerial Transition Plan for the Guaraní People, contingency plans and food security

67. The Bolivian Government must effectively involve the Guaraní people, including through APG, as established by the new Constitution, in evaluating the successes and weaknesses of the Inter-ministerial Transition Plan and in redesigning the Plan based on the evaluation results. The new structure of the Plan should ensure full and effective participation of APG representatives in the governance and management as well as programme and project-level structures, thereby implying the need to decentralize the Plan so that it is locally driven and monitored.

68. The Inter-ministerial Transition Plan must be refocused to resolve urgently the current food crisis affecting Guaraní communities in the Chaco region. The

ministries involved with the Plan must enhance their collaboration and synergy-building. These ministries can seek help from relevant United Nations agencies and technical and financial assistance.

69. The Government must determine the scale of and resolve the food and child malnutrition crisis currently affecting Guaraní peoples, a result of communities being expelled from the haciendas because of the recent *saneamiento*. All efforts in this regard should be undertaken in cooperation with Guaraní organizations, local NGOs and other relevant local agencies, as well as with relevant United Nations agencies, including FAO and WFP.

F. Development

70. The Bolivian Government, the prefectures of the relevant departments and the United Nations should support capacity development to strengthen and develop Guaraní institutions and leadership. Such support should be provided alongside the other development activities recommended below.

71. In accordance with the Constitution, and while land reform is not completed, the Government and the prefectures of the relevant departments should support the development of viable alternatives to obtain incomes and the creation of sustainable productive and commercial activities for indigenous peoples, including women, affected by forced labour practices.

72. While carrying out land reform, the Government must provide intensive support and training for at least the first five years while the establishment of key infrastructure, including Guaraní schools, health services, roads, housing and secure access to water, takes place. The intensive support should involve a well-prepared team of professionals who would live in the communities and provide a minimum of organizational, managerial and financial training for all land beneficiaries (women and men). Methodologies exist for this and are based on experiential learning techniques that have proved successful in other countries of the continent.

73. In accordance with their constitutional jurisdiction and with indigenous autonomies when they are established, both the Government and the prefectures of the relevant department should expand coverage of and ensure access to social services, including health care, bilingual education and social security. Mobile brigades should be established to provide such services to indigenous communities.

74. Indigenous communities in the exercise of their autonomy must have access to legal services to protect and defend their interests on a collective basis.

75. The Government, in coordination with APG, must provide Guaraní communities with roads that are formally part of the national network and hence have legal protection for "rights of way". At present the lack of clarity allows landowners to control the Guaraní people, as well as anyone who travels on the roads in question, as they are considered owners of these roads because they enjoy the support of the municipal authorities who maintain them.

76. The Government should enhance means of communication, including radio and telephones, guaranteeing access to Guaraní peoples in the Chaco region.

G. Participation and social dialogue

77. The Bolivian Government should seek to establish a dialogue among the parties involved in labour and land conflicts, including both workers' and employers' organizations. A central goal of such dialogue should be to improve the current situation of Guaraní peoples in the Chaco region. No agreement should be adopted without the free, prior and informed consent of the indigenous peoples involved.

78. Rural development initiatives must be undertaken with the genuine participation and free, prior and informed consent of Guaraní peoples. All interventions by the Government or the prefectures of the relevant departments must be demand-driven, rather than top-down approaches. In the context of the new Constitution, the development of Guaraní people must be regarded as a responsibility of Guaraní autonomies.

H. End discrimination on the basis of indigenous status

79. The Bolivian Government should take effective measures in consultation and cooperation with indigenous peoples to combat discrimination against indigenous peoples. This should include the design and execution of priority anti-discrimination programmes, including affirmative action measures.

80. The Government must repeal or amend all discriminatory laws or practices, for example, the requirement that, in order to be registered with the Civil Registry, one must present a certificate of baptism.

81. Biometric accreditation excludes indigenous peoples, as many will not be able to travel to urban centres to register and may lack access to the conditions, such as electricity or identity cards, required to carry out the biometric accreditation. It is a discriminatory practice and should be amended or abandoned.

I. Regional cooperation and cross-border strategies

82. The Governments of Paraguay and the Plurinational State of Bolivia should cooperate and share promising practices with regard to the elimination of forced labour of indigenous peoples in the Chaco regions of each country. The development of a cross-border programme for the protection of indigenous peoples of the Chaco should be considered, with adequate financing. Such a programme must be in compliance with section VII of ILO Convention No. 169, which addresses contacts and cooperation across borders and, in particular, with article 32, which calls upon Governments to take appropriate measures, including by means of international agreements, to facilitate contacts and cooperation between indigenous and tribal peoples across borders, including activities in the economic, social, cultural, spiritual and environmental fields; and the right of the United Nations Declaration on the Rights of Indigenous Peoples, especially as regards their free, prior and informed consent.

83. Given that the Ombudsman Office has authority on international issues such as the rights of Bolivian emigrants, the mission suggests that it also address cross-border indigenous issues. This extraterritorial action should be welcomed by the

Government of Paraguay because it can effectively help to eradicate forced labour practices in the Paraguayan Chaco. This must be undertaken with the agreement between the Government of Paraguay and the Bolivian Government and with the free, prior and informed consent of indigenous peoples in both countries.

84. Considering that the historical lands of the Guaraní peoples and other indigenous peoples are divided between Argentina, the Plurinational State of Bolivia, Brazil and Paraguay, policies and efforts in their favour should be designed within the Southern Common Market (MERCOSUR) and emerging regional integration organizations. In this regard, lessons regarding the participation of indigenous peoples can be drawn from other regional cross-border institutions, such as the Andean Community of Nations and the Bolivarian Alternative for Latin America (ALBA).

85. The United Nations and bilateral aid agencies should share relevant good practices from their experiences in different countries and, more importantly, should finance cross-border programmes.

J. Additional follow-up for the United Nations

86. The recommendations contained in the report reflect the view of the Permanent Forum with regard to addressing the situation of forced labour of indigenous peoples in the Chaco region. The Permanent Forum calls upon the United Nations country team in the country and especially OHCHR to promote the human rights of indigenous peoples generally and, in particular, the implementation of the recommendations contained in the present report. This is particularly urgent as, given the coming elections, conflict and tension are only likely to grow and the Guaraní peoples are vulnerable in any situation of conflict over patrimony rights.

87. The Permanent Forum should engage in a dialogue with the agencies of the United Nations in the country, the goal of which should be the application of the United Nations Declaration on the Rights of Indigenous Peoples, which has been incorporated into Bolivian law, and the implementation of the recommendations of the Permanent Forum by the relevant agencies. The Bolivian Constitution itself provides the means to achieve the implementation of the Declaration and, under article 42, also obliges United Nations entities to work towards its implementation.

88. The United Nations agencies in the Plurinational State of Bolivia should, as a matter of urgency, coordinate their efforts with regard to the situation of indigenous peoples in the Bolivian lowlands to assist in protecting their human rights in the face of the harassment to which they are subjected.